IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 822 OF 2004

Shri Shamrao Rangnath Suslade & anr. ... Appellants

V/s

Shri Popat Rajaram Parade ... Respondent

Mr. G.N. Salunke i/by Mr. H.G. Wakshe for the appellants.

Mr. U.R. Agandhsurve for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 20TH SEPT., 2004.

P.C.:

1. This is an appeal filed by the plaintiffs appellants against the judgment and order dated 12.8.2002 passed by the Additional District Judge, Pandharpur in Reg. Civil Appeal No. 20 of 2001 allowing the appeal and setting aside the order and judgment of the learned Civil Judge, Sr. Divn., Pandharpur in R.C.S. No. 17 of 1994.

2. Plaintiffs - appellants are husband and wife having stone crushing business and own machinery in that regard. The respondent is a contractor. According to the plaintiffs, there was an agreement between the

parties to let out the stone crusher on monthly rental basis at the rate of Rs.3,500/- for the period of three years and expenses of the repairs of the crusher and engine to be borne by the respondent. According to the appellants, the part payment of rent towards advance was made but thereafter the respondent refused to pay the rent or return the machine. Hence the suit came to be filed for recovery of the amount of rent after deducting the part payment received in the course of the transaction.

The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the present appellants had proved the oral agreement between the parties and were entitled to receive the arrears to the extent of Rs.1,07,150/- towards the rental charges and passed decree to that effect.

The appeal was preferred against the said order before the Addl. District Judge, Pandharpur who adjudicated the appeal on merits and came to the conclusion that the plaintiffs had not proved the suit claim and, as such, allowed the appeal by dismissing the suit which was decreed by the lower Court. Hence the present appeal.

3. I have heard the learned counsel for the appellant and perused the available record. It may be noted that the lower Appellate Court Judge has appreciated the entire evidence on record and has come to the conclusion that the plaintiffs' evidence is not sufficient to discharge the burden upon him in order to decreeing the suit. The pleadings of the plaintiffs are also found to be vague and as such came to the conclusion that the part payment made by the present respondent was proved to be towards purchase of crushed stones and not towards the rent of stone crushing machine, which, in fact, was lying open outside of the road and was not in custody of the respondent. On scrutiny of the entire judgment of both the Courts below, I find that the lower appellate Court has properly appreciated the evidence and has come to the conclusion that the plaintiffs' suit deserves to be dismissed.

Moreover, there is absolutely no substantial question of law involved in this appeal. If we apply the ratio laid down by the Supreme Court in the case of **Kondiba Dagdu Kadam v/s Savitribai Sopan Gujar, reported in 1999 (3) SCC 722,** to the effect that in a case where from a given set of circumstances two inferences are possible, one drawn by the lower Appellate Court is binding on the

High Court in second appeal. Adopting any other approach is not permissible. This is more so, when even otherwise, no substantial question of law is involved in this dispute and as such the appeal deserves to be dismissed in limine.

Hence, the appeal stands dismissed accordingly. Consequently, the civil application also stands dismissed.

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